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Supreme Court, U.S.
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In The
Supreme Court Of The United States
October Term, 1995

UNITED STATES OF AMERICA
EX. REL. DILIP K. PAUL,
Petitioner

v.

U. S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION and PARSONS, BRINKERHOFF, QUADE & DOUGLAS, INC., PB-KBB, INC. and BATTELLE MEMORIAL INSTITUTE,
Respondents

Petition For A Writ Of Certiorari
The United States Court Of Appeals
For The Fifth Circuit

REPLY TO BRIEF IN OPPOSITION

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PETITIONER'S REPLY TO BRIEF IN OPPOSITION

Petitioner would like to point out the following willful misrepresentations were made by respondent Battelle Memorial Institute (BMI) in its brief:

Response to statements under JURISDICTION:

BMI's statements that petitioner Dilip Paul is not the original source of information, and the suit is brought with publicly disclosed information, are fraudulent, false and submitted under bad faith, in order to mislead the Supreme Court.

Petitioner has submitted a written evidence, his exhibit no. 12, which he submitted to respondant P.B.-K.B.B. on July 28, 1982. This is a 44-page document which provides PRIMA FACIE evidence that petitioner Paul is the ORIGINAL AND SOLE source of information upon which the suit is filed.

The suit is based on respondant Parsons, Brinkerhoff, Quade & Douglas (PBQ&D)/P.B.-K.B.B's fraudulent submission of a bid in order to receive U.S. contracts and their fraudulent submission of performance to the United States. The Suit is for collecting the entire amount of direct and consequential damages suffered by the United States, and by the petitioner as a result of responants' willful violation of the requirements of the False Claims Act, 31 U.S.C. § 3729 et seq.

There is absolutely no public information on any of those, and BMI will not be able to show any evidence to this court on these, and BMI knows it.

The courts below looked at BMI's

fraudulent contention, and rejected it, and BMI knows it too.

The court may note that BMI's this contention contradicted its other contentions made in its brief in Opposition, which have totally destroyed the credibility of its reply brief. For instance, it stated under its PROCEDURAL HISTORY and under LITIGATION HISTORY that there were prior litigations in which the petitioner was the plaintiff. Also on p-16, under "C" it stated "The Lower Courts Properly Found That Paul's Instant False Claims Act Suit Constitutes the Same Cause of Action As His Prior State-Court Claim"

Paul could not have litigated the case all along, if he is not the ORIGINAL SOURCE of information.

These are the kinds of misrepresentations BMI has put forward in every sentence of its opposition to the petition for certiorari, and this court should disregard BMI's oppositions. BMI is not an honest organization and its brief totally unmasked its phoney nature and exposed its true character.

BACKGROUND OF ORIGINAL CASE: PB-KBB obtained an original judgement for wrongful termination of petitioner in the Harris County court by fraud, perjury, evasion, changing its prior testimonies to the Mine Safety Review Commission, and by willfully disregarding the requirements of Fed. Rules of Civ. Procedure (FRCP) No. 33 and 37. The newly discovered evidence also show that Harris County judgement was void, as an indispensable party, as required under FRCP 19 for just adjudication, could not be brought on the

trial due to PB-KBB's cover-ups, evasive responses submitted during discoveries, and due to its other misconducts. Further, that indispensable party is of Canadian domicile and Harris County court lacked in personam jurisdiction over it. [28 U.S.C § 1332 (a)(2)].

Response to SUMMARY OF ARGUMENTS:

The courts below erred in ruling in the instant case, as the judgment of the original case, as well as the instant case, which relied on the original one, are void, because of lack of subject matter jurisdiction, in personam jurisdiction, and due to lack of due process in both cases. As such, the original judgment is subject to collateral attack, and the instant judgment is subject to direct attack.

Further, in the original case in Harris County court, only plaintiff's exhibit 5A, dealing with defendant's preliminary design in the Deaf Smith County, Texas, was on trial. P.B.-K.B.B's firing of petitioner for not participating in that design was the sole cause of action in the original case.

In the instant case, plaintiff's exhibit 5A, as well as exhibits 5C, 5D and [+ designs in four additional sites], dealing with defendants' designs in Utah, Texas Mississippi, and in Louisiana, are on trial. So, both cases did not originate from same set of facts. The exhibit A is NOT EQUAL TO [exhibit A + exhibit C + exhibit D + four other sites in four states].

Each of the states is independent and sovereign to the other, and one state cannot usurpate on another state's

jurisdiction. As such, a Texas state court cannot adjudicate a case arose in Utah, in Mississippi or in Louisiana. It does not have the authority to do so. So, the original case and the instant case did not arise out of same sets of operative facts. So, res judicata and collateral estoppel are also inapplicable in the instant case. Hence the instant judgment is also void for lack of due process as as well.

Further, Texas laws will not be applicable in the instant case, because statutory directions of the False Claims Act (FCA) will control. In addition, application of State laws will destroy the consistency of FCA adjudication throughout the country, and, in the process, will ruin the FCA's effectiveness as a tool to protect the U.S. from the cheaters.

Response to BMI's Issue No. I.

As per the Harris County District Court's jurisdiction over the False Claims Act, appellant believes that the following Supreme Court holdings in Claflin v. Houseman, 3 Otto 130-143, 1876, is relevant. It stated:

> "Congress has not the power, if it had the will, to confer Jurisdiction on any State Court." [Citations].
>
> "Where Congress has an exclusive right to legislate, the National Courts have an exclusive power to adjudicate". [Citations]
>
> "Or, as expressed in U.S. v. Cornell, 2 Mason, 91: 'The right to exclusive legislation carries with it the right of exclusive jurisdiction.'"
>
> ---
>
> "Where the State cannot legislate,

its courts cannot adjudicate. To hold otherwise, would make the creature greater than the creator." [Citations]

"States, in providing their own judicial tribunal, have a right to limit, control and restrict their judicial functions and jurisdiction, according to their own pleasure". [Citation]

"No court can exercise a jurisdiction which its sovereign cannot confer. [Citations]

"On the other hand, jurisdiction of a cause of action cannot belong to a court which cannot be controlled by the authority creating such cause of action."

"This cause of action was created by Congress. Congress cannot control the State Courts; therefore the State Courts have no jurisdiction."

Response to BMI's Issue No. II

On the applicability of Texas State laws on the adjudication of the False Claims Act, the statements of the Supreme Court, in Claflin, supra, is relevant

"Where a new right is given, which the party would not be entitled to but for the statute, the remedy afforded by the statute is exclusive." [Citations]

For the reason stated, the instant judgment entered by the court below, is VOID, as it was entered without due process.

Further, the Texas state law has no application in cases within the jurisdiction of Utah, Louisiana and of Mississippi. Hence, the instant judgment is VOID, as it was entered without due process, for this reason as well.

RESPONSE TO BATTELLE'S ARGUMENTS

Response to ARGUMENT I A.

As stated in Calflin, supra, Battelle's contentions are absurd and do not comply with the U.S. Constitutional provisions and with the long-standing holdings of the cited case laws of this court on this issue.

BMI stated that Paul did not cite any authority where a state agency became defendant under FCA. There are numerous such authorities, and only handful of them are cited here: United States ex rel. Milam v. University of Texas M.D. Anderson Cancer Center (1992 CA4 Md) 961 F2d 46; United States v. Board of Education (1988, DC NJ) 697 F Supp 167; United States ex rel. Hagwood v. Sonoma County water Agency (1991 CA 9 Cal) 929 F2d 1416; U.S. ex rel. Fine v. University of California, N.D.Cal.1993, 821 F. Supp. 1356. BMI's contentions and citations under this issue are misleading and inappropriate.

Response to ARGUMENT I B.

As stated in response to Battelle's Issue No. 2, Summary of Arguments, Battelle's contentions are contrary to this court's holdings and do not comply with the U.S. Constitutional requirements.

Response to ARGUMENT I C.

As stated on the summary portion of the argument, the original case and the instant case did not arise out of the same set of facts. The instant case arose out of defendants' activities in four states [Utah, Texas, Louisiana & Mississippi], whereas the original case arose out of

PB-KBB's activities in Texas only.

Response to ARGUMENT I D.

In the original case, Dilip Paul and PB-KBB, were the parties. However, due to PB-KBB's misconducts, cover-ups, perjury and disregard to the FRCP 33 and 37, (28 U.S.C.A), an indispensable party, Thyssen (CANADA)'s employees of Canadian domicile, could not be brought in the original suit.

In the instant case, the United States of America and Dilip Paul are the plaintiffs.

Parsons, Brinkerhoff, Quade & Douglas Inc, P.B.-K. B.B., and Battelle Memorial Institute, are the defendants. However, newly acquired information from Harry Gleser, an ex-employee of PB-KBB, Thyssen (Canada)'s Canadian domiciled employees need to be included as co-defendant. Thyssen (Canada) did the fraudulent designs in Utah, in Texas and in Mississippi, which are the subject matter of the instant suit.

The court may note that Texas state court does not have jurisdiction over the Canadian domiciles. Hence the original judgment is void and the instant judgment, declaring res judicata and collateral estoppel, is also void, for the same reasons.

A void judgment is something very different than a valid judgment. The void judgement creates no binding obligation upon the parties or to their privies; it is legally ineffective. [Kelb v. Feuerstein (1940) 308 US 433, 60 S.Ct 343, 84 L ed 370; Williams v. North Carolina (1945) 325 US 226, 65 S. Ct 1092, 89 L ed 1577]

Response to ARGUMENT I D. 1.

BMI is privy to THYSSEN (CANADA) too. Battelle submitted the fraudulent designs performed by the Canadians and collected money from the U.S. As such, due to their conspiratorial relationships, neither Battelle, nor the Candians could be brought to the Texas State court, because of lack of in personam jurisdiction.

Response to ARGUMENT I D. 2.

Paul is not bound by a state court judgment which is void.

Response to ARGUMENT I E.

Paul argued quite extensively in the District court that the state court judgment is not on the merits. [see the cited portions of Paul's pleadings on the record]. So this court should review what is on the record.

Response to ARGUMENT I E. 1.

BMI states that because of United States decline to prosecute the Qui Tam action, the subject matter jurisdiction of the instant action is changed. This is a gross misrepresentation of the qui tam provision of the False Claims Act, [31 U.S.C. § 3729 et seq.] The court may note that all of the BMI cited case laws here are from the U.S. District Courts. The cited case laws provide PRIMA FACIE evidence that in qui tam actions, the subject matter jurisdiction of the False Claims Act is not transferred to the state courts, as Battelle try to misrepresent here.

BMI also failed to show how the U.S. became a non-party here when all of its interests are protected by the qui tam

plaintiff, and two of its attorneys are monitoring the instant case.

Response to ARGUMENT I E. 2.

A void judgment may be collaterally attacked at any time in any proceeding, state or federal, in which the effect of the judgment comes in issue, which means that if the judgment is void it should be treated as legally ineffective in the subsequent proceeding. [Comprehensive Merchandising Catalogs, Inc. v. Madison Sales Corp. (CA7th, 1975 521 F2d 1210; Little v. Celebrezze, D.C. Tex 1966, 259 F. Supp. 9; Hickling v. Edwards, C.A8th, 1955, 226 F.2d 410].

Response to BMI Issue II

The instant judgment is void due to the lack of due process of law.

CONCLUSIONS

At issue here is the fate of the 133 years old False Claims Act, and that of the U.S. Nuclear Waste Isolation project(s). The decision of this court will definitely set the courses for these two vital national issues.

For 133 years False Claims Act related cases have been exclusively adjudicated in the U.S. courts. The Constitutional directives, statutory languages and this courts holdings on similar cases, state that the State courts do not have concurrent jurisdiction to try the instant case. There is absolutely no reason for changing the long-standing holdings of this court.

Besides the Subject matter jurisdiction, territorial and in personam jurisdictions, as well as due process of

law, is at issue here. All of these issues are Constitutionally significant.

PB-KBB and its attorneys obtained the Texas judgment for wrongful termination by frauds, perjuries, cover-ups, evasions, misrepresentations, changing testimonies given to earlier tribunals, misconducts and by disregarding the requirements of FRCP no. 33 and no 37, 28 U. S.C.A. Under such circumstances they are subject to sanctions under FRCP 37 (b). The United States' claims against the unscrupulous defendants cannot be collaterally precluded on the basis of such illgotten judgment in a County court.

The Congress, while enacting and amending the False Claims Act, intended to deal with such unscrupulous and cheating federal contractors. By perpetrating frauds on the court, defendants have demonstrated their criminal propensities, and the court records will show those.

BMI's reply brief is loaded with misstatements of facts and misleading interpretation of their version of the laws. Defendants have defrauded the U.S. for more than 6/7 years. They brought doom to every project they got involved in.

WHEREFORE, based on the foregoing, petitioner prays that writ of certiorari be granted.

Respectfully submitted

Dated January-16-'96

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